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IN THE COURT OF APPEALS OF INDIANA

SOUTHWEST OHIO GENERAL CONTRACTORS, INC., an Ohio Corporation,	)	
Appellant-Petitioner,	)	
vs.	)	No. 15A01-0701-CV-19
PLAN COMMISSION OF THE TOWN OF ST. LEON, INDIANA, an Indiana Municipal Corporation,	)	
Appellee-Respondent.	)	

APPEAL FROM THE DEABORN CIRCUIT COURT
The Honorable James D. Humphrey, Judge
Cause No. 15C01-0508-PL-45

December 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Southwest Ohio General Contractors, Inc. ("Southwest") appeals the trial court's order affirming the denial by the Plan Commission of the Town of St. Leon, Indiana ("the Commission") of Southwest's application for primary approval to develop a subdivision.

We affirm.

ISSUE

> Whether the trial court abused its discretion when it denied Southwest's motion to correct error and affirmed the decision of the Commission to deny primary approval of Southwest's plat for the Equestrian Estates subdivision.

FACTS

In the spring of 2005, Southwest submitted a proposed plat for the development of Equestrian Estates ("Estates") on its more than 112-acre parcel in the town of St. Leon ("the Town"). The parcel is bordered on the north by North County Line Road, a narrow two-lane gravel road, and on the west by Trackville Road. Slightly east of the parcel, Post 464 Road intersects with North County Line Road. The plat reflects 65 residential lots on the *eastern* 77-acre portion of the parcel -- not adjacent to Trackville Road. The residential lots would be arranged on a single continuous Estates roadway, shaped like a horizontally elongated "U." Hence, access to Estates, via either end of the "U," would be solely by means of North County Line Road – which in turn would lead to either Trackville Road or Post 464 Road.

At the April 6, 2005, meeting with the Commission, Southwest sought primary approval of its plat pursuant to the Comprehensive Zoning Ordinance ("the ordinance").

Six residents voiced their concerns to the Commission about the three roads that would be used to access Estates and the effect on those roads of increased traffic associated with the development of Estates. The Commission noted concerns about the capacity of the roads and voted unanimously to require that Southwest seek a change in the zoning for the Estates property – from its current agricultural zoning to residential zoning.[1]

Instead of seeking such a rezoning, Southwest resubmitted its plat and again asked primary approval for Estates. At a meeting before the Commission on July 6, 2005, Southwest referenced the traffic impact study that it had submitted in February of 2005, as well as its reports reflecting an adequate existing wastewater collection system; arrangements for the provision of sewer, water and electric service; and adequate school capacity. Southwest noted that the ordinance's agricultural district allowed for homes on one-acre lots and that each of its proposed residential lots would be at least one acre; and that the ordinance did not preclude a subdivision being in an agricultural district. Southwest asserted that its proposed subdivision met "all the requirements of [the Town's] ordinance." (App. 203).

Noting that this would be the Town's "first subdivision," the Commission members cited the "issue" of "the roads leading to that property and the capacity of them [sic] being able to deal with the increased traffic." (App. 204, 205). They further cited Southwest's own traffic impact "study" in concluding that "it's a safety issue . . . a big safety issue" as to "the roads to the subdivision." (App. 205). The latter concern was

[1] Apparently the meeting was not recorded; a single page report and cursory minutes reflect the foregoing activity at the meeting.

further emphasized by a Commission member who identified himself as a tow truck driver. The Commission's attorney also noted the impact study's conclusion that "the service roads to this subdivision" were "inadequate for the traffic already on them." (App. 206). The attorney also reiterated comments from residents and Commission members at the previous meeting to the effect that drivers "have to stop actually to pass each other on certain parts of the road" near Estates. (App. 216). Commission members further noted that Trackville Road had "water problems when it rains," in that "it doesn't drain [well] back there" and experienced "flooding problems." (App. 207).

Additional public comments were then heard. A resident commented upon "all the curves in" Trackville Road. (App. 215). Another resident stated that roads were "not wide enough to pass on now," and that safety "was a big issue" with vehicles traveling from opposite directions. (App. 217, 218). One resident specified that she lived on Trackville Road, which was already "a safety hazard" with its curves, blind spots, and two one-lane bridges. (App. 222). Another resident referred to "the other issue" aired at the April meeting -- "the character of that part of the town,"[2] and a Commission member stated that the Commission had "asked for a rezone" to "protect[] it." (App. 225). Another resident stated that he lived on North County Line Road, a gravel road that "is not wide enough to pass unless you slow down and stop." (App. 223). One Commission member "totally agree[d]" that "North County Line Road is not wide enough" for existing traffic. (App. 229).

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[2] A comment by the Town's attorney indicated that Estates would be "essentially sitting in the middle of some cornfields." (App. 231).

The meeting concluded with the Commission unanimously passing a motion to deny approval based on "the need to rezone," given the character of the surrounding area; "substantial concerns about the roads," and water drainage problems. (App. 238). The written decision stated that the Commission's July 6, 2005, denial was based on the following:

> 1. The land is currently zoned in the Agricultural District and is surrounded by agricultural property. Given the agricultural character of the surrounding property, it was felt that subdivision approval was inappropriate unless the applicant first applies for, and secures, a re-zone of the property to the Residential District.
>
> 2. Trackville Road and Post 464 Road are already inadequate for the traffic handled thereon. Increased traffic creates a public safety hazard.
>
> 3. Drainage along Trackville Road is already a problem. The subdivision would create further drainage problems.

(App. 97).

On August 5, 2005, Southwest filed a petition for a writ of certiorari with the trial court, challenging the Commission's denial of primary approval for Estates and including the plat thereof. The Commission responded, filing with the trial court the ordinance, Southwest's own traffic impact study and other reports submitted by Southwest to the Commission, the report and minutes of the Commission's April 2005 meeting, the transcript of its July 2005 meeting, and the written July 6, 2005 decision of denial.

On October 23, 2006, the trial court issued its findings of fact and conclusions of law. Therein, it found the following as to the "three roads [that] offer the only access to" the proposed subdivision. (Order 2). North County Line Road is "a narrow, two-lane gravel road." *Id.* Although both Trackville Road and Post 464 Road are paved, they are

"narrow" and "winding," and "in places, vehicles traveling these roads are obliged to pull to the side of the road to allow other traffic to pass." *Id.* Southwest's own traffic impact study "acknowledges that North County Line Road and Trackville Road were determined to be deficient by County lane and shoulder width standards," and Southwest "does not dispute" the study's indication that "Post 464 Road is also, in places, deficient by County lane and shoulder width standards." *Id.* The trial court also found that concerns about the roads had been expressed "by citizens and by [Commission] members, all of whom live in the immediate area." *Id.* at 3.

The trial court also found that "at each public hearing," Commission members had "expressed concern over the rural character of the property." *Id.* However, it noted that the ordinance allows "a single family residence on a one acre lot" in both agricultural and residential districts. *Id.* It cited the ordinance's statement that "the purpose" of the agricultural district was "to preserve and protect the decreasing supply of agricultural land, natural resources, etc.," but found that the ordinance did not "specifically exclude" or "preclude construction of subdivisions in the agricultural district." *Id.*

In reaching its conclusions of law, the trial court discussed the facts, reasoning, and holding of *Van Vactor Farms, Inc. v. Marshal County Plan Comm'n*, 793 N.E.2d 1136 (Ind. Ct. App. 2003), *trans. denied*, as "closely parallel[ling] the matters at issue in this case." *Id.* at 4. It noted that in the Commission's consideration of a proposed subdivision, the ordinance "specifically require[d] consideration of the relationship [of the subdivision] to existing and previously planned streets that may be located through and in the vicinity of the proposed subdivision." *Id.* at 6 (citing ordinance Section

1120(A)(1)). It further noted the ordinance's mandate that the Commission consider "access from subdivision street system to major traffic arteries" and the "relationship of the new streets to existing streets and roads . . . ." *Id.* (citing Section 1120(A)(1)(b) and (d)). It further noted that the ordinance included "standards for minor streets and marginal access streets," with "specific width standards for various types of streets." *Id.* (citing Section 1120(A)(1)(1-d), and (A)(2) – (10)). It concluded that these ordinance requirements were similar to those in the Marshall County ordinance, and that "the *Van Vactor* court upheld the Marshall County Planning Commission's refusal to grant primary approval based in part on the inadequacy of existing roads slated to serve the subdivision, which were located in rural agricultural areas, not properly designed for additional traffic," and "legitimate traffic safety concerns and congestion concerns given the current design specifications of the roadways. (Order 6 (latter quote from *Van Vactor*, 793 N.E.2d at 1147)). The trial court then concluded that with the evidence showing that "Trackville Road, Post 464 [Road], and North County Line Road" were "inadequate in design at the present time," and other evidence from residents "regarding the width of the road, the [Commission] acted within its discretion in denying primary approval of the subdivision." (Order 6). The trial court further concluded that the denial of primary approval "was legal" and "based on rational considerations regarding road safety and the character of the zoning ordinance as a whole." (Order 7).

On November 22, 2006, Southwest filed its motion to correct error, requesting that the trial court "alter amend, modify or correct its judgment." (App. 249). On December 4, 2006, the trial denied the motion.

DECISION

Southwest argues that the trial court abused its discretion in denying its motion to correct error and in affirming the Commission's decision that denied primary approval of its plat for Estates. Specifically, Southwest claims that the trial court "committed an error of law in denying primary approval of" its plat of Estates because (1) no finding by the Commission "ostensibly justifying its rejection of the plat relate[s] to any of the specific standards set forth in the subdivision control ordinance"; (2) the Commission's findings "are to [sic] vague and indefinite to give Southwest notice as to the nature of the alleged violations"; and (3) the Commission's "findings are not supported by the evidence." Southwest's Br. at 5.

The standard of appellate review of the trial court's ruling on a motion to correct error is abuse of discretion. *Paragon Family Restaurant v. Bertolini,* 799 N.E.2d 1048, 1055 (Ind. 2003). The scope of review of the decision by a local plan commission, an administrative decision, is prescribed by statute, which

> provides that a court may provide relief only if the agency action is (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence. Section 4-21.5-5-14 further provides that "[the] burden of demonstrating the invalidity of the agency action is on the party . . . asserting invalidity."

Equicor Dev. v. Westfield-Washington Twp., 758 N.E.2d 34, 36 (Ind. 2001) (citing and then quoting Ind. Code § 4-21.5-5-14). However, in reviewing an administrative decision, a court is not to try the facts de novo or substitute its own judgment for that of

the plan commission. *Equicor*, 758 N.E.2d at 37. The commission's decision will be sustained if it was correct on any ground stated for disapproval. *Town of Beverly Shores v. Bagnall*, 590 N.E.2d 1059, 1062 (Ind. 1992). Where, as here, the trial court's factual findings are based on its consideration of a paper record, we conduct our "own de novo review of the record." *Equicor*, 758 N.E.2d at 37.

Southwest first argues that the Commission's findings -- e.g. that "Trackville Road and Post 464 Road are already inadequate for the traffic handled thereon" and "increased traffic creates a public safety hazard" (App. 97) -- fail to directly reflect requirements in that regard contained within the ordinance. Southwest reminds us that in *Plan Comm'n for Floyd County, Indiana v. Klein*, 765 N.E.2d 632 (Ind. Ct. App. 2002), we held that "[t]he Plan Commission's only task when reviewing Klein's application for preliminary approval was to determine whether the proposed plan complied with the concrete standards set out in the subdivision control ordinance, . . . and the Plan Commission's denial of Klein's application on the basis of factors outside the ordinance was erroneous." *Id.* at 646. As noted by the trial court, however, the ordinance contains specific provisions with respect to the matter of roads affected by the proposed subdivision, specifying the respective width standards. Further, the ordinance requires that the Town consider the "relationship" of the proposed subdivision "to existing . . . streets . . . located . . . in the vicinity of the proposed subdivision," taking into account the "access from subdivision street system to major traffic arteries." (App. 74).

Although Southwest's own traffic impact study was presented to the Commission and to the trial court, it is not included in Southwest's Appendix on appeal. It appears

undisputed that this study reflected that all three access roads failed to meet the county's standards for lane and shoulder width. That the study also reflected the failure of these roads to meet the width standards set out in the Ordinance is a reasonable inference, given the Commission's statement of inadequate roads as a reason for its denial of primary approval (and Southwest does not argue to the contrary). The road width standards of the ordinance are "concrete standards," contravening Southwest's repeated citation to *Klein* and *Van Vactor* to argue that no such concrete standards support the denial.

Further, we find instructive our Supreme Court's most recent discussion of zoning ordinance issues in *Fulton County Advisory Plan Comm'n v. Groninger*, 810 N.E.2d 704 (Ind. 2004). The Groningers were denied primary approval for a proposed subdivision for failure to comply with the vision clearance standards of the ordinance, after an engineering report obtained by the Zoning Administrator concluded that "the proposed entrance would create hazardous driving conditions." *Id.* at 707. The pertinent part of the ordinance provided that

> No curb cut or drive shall be permitted when:
> (a) A minimum of 225 feet from the crest of a hill where . . . .
> (b) A minimum of 175 feet from the crest of a hill where . . . .
> (c) The visibility to or from the desired location is determined to be impaired by the Zoning Administrator.

Id. at 708. The Groningers argued that (a) and (b) were the "requirements" of the ordinance for approval, and because both had been met, they were entitled to approval.

Groninger stated that the provision should not be construed "so as to defeat its purposes," which read with other sections of the ordinance, were the "safe" movement of

traffic and "avoiding visual impairment." *Id.* at 709. *Groninger* then considered precedents in which this court had "upheld zoning ordinances that set forth similar requirements to protect the safety and health of potential residents without listing specific numerical requirements as being sufficiently concrete, precise and definite under" the Indiana statute governing primary plat approval. *Id.* For example, in *Burrell v. Lake County Plan Comm'n*, 624 N.E.2d 526, 528 (Ind. Ct. App. 1993), *trans. denied*, the plat applicants challenged as "vague and uncertain" an ordinance requirement that a plat be denied "where a proposed subdivision would adversely affect the health, safety, or general welfare of the County." *Id.* The provision at issue stated,

> No land shall be subdivided which is unsuitable for subdivision by a reason of flooding, collection of ground water, bad drainage, adverse earth or rock formation or topography, or any feature likely to be harmful to the health safety, or welfare of the future residents of the subdivision or of the community. Such lands shall not be considered for subdivision until such time as the conditions causing the unsuitability are corrected.

Id. *Groninger* noted that we had found this "ordinance provided ample notice to the plat applicants of the conditions . . . that would be evaluated by the commission," and that "[n]early identical ordinances were upheld as sufficiently precise in *Brant v. Custom Design Constructors Corp.*, 677 N.E.2d 92, 99 (Ind. Ct. App. 1997), and *Wolff v. Mooresville Plan Comm'n*, 754 N.E.2d 589 593 (Ind. Ct. App. 2001)." *Id.*

Groninger also cited a case involving "an ordinance regulating access to a county road in *Kosciusko County Area Plan Comm'n v. 1st Source Bank*, 804 N.E.2d 1194 (Ind. Ct. App. 2004)." 810 N.E.2d at 710. There, the ordinance listed a series of "factors that the planning commission would consider when deciding whether to approve or deny a

plat application," and this court "held that this list was sufficiently precise to give fair warning to the public as to what the planning commission would consider in approving or denying a plat." *Id.* Our Supreme Court then concluded that the visual clearance standards "placed the Groningers on notice of a condition that would be evaluated by the Plan Commission: whether the proposed entrance created a visual impairment." *Id.* (emphasis added). We read *Groninger* to direct courts to consider the law and the facts on the determination by a plan commission in applying its validly adopted zoning ordinance on a case-by-case basis, taking into account the self-determination inherent in the local community decision-making process.

We have already concluded that the ordinance contains specific standards for nearby roadways and requires consideration of access issues vis-à-vis these roadways and the location of the proposed subdivision. Nevertheless, Southwest argues that the ordinance only requires the Commission to "consider" these things, and therefore the provisions are "too vague and indefinite." Southwest's Br. at 10. We find *Groninger* to hold otherwise. Similarly, Southwest contends that the requirement "to consider" does not require anything with respect to "the condition of existing roads." Reply at 3. Southwest further appears to assert that the ordinance's width provisions do not "require[] that roads in the vicinity of the proposed development meet that standard." Southwest's Br. at 11. We will not construe an ordinance "so as to defeat its purpose." *Groninger*, 810 N.E.2d at 709. The ordinance states it is "designed . . . to secure adequate . . . convenience of access, and safety . . . , . . . avoid congestion in the public streets; and to promote the public health, safety, comfort, morals, convenience and

general public welfare." (Preamble). Moreover, the purpose of the subdivision section is to "promote the harmonious development of real estate," including "the coordination of streets" and "movement of traffic" as well as the "access of firefighting equipment and emergency vehicles." (Section 1100). Therefore, these arguments fail.

Finally, Southwest argues that the trial court's reliance on *Van Vactor Farms* is "misplaced" because the Commission failed to refer to specific ordinance requirements in the text of its denial decision. Southwest's Br. at 12. We are not persuaded that such is dispositive. The denial makes clear that one basis for the decision was the Commission's concerns about the adequacy of the local roads that would be used for access to and from Estates, with the conclusion that "increased traffic" would "creat[e] a public safety hazard." (App. 97).

Southwest's appeal must fail because it has failed to demonstrate the invalidity of the Commission's denial of primary approval to its plat. *See Equicor Dev.*, 758 N.E.2d at 36. Given the reception of evidence concerning existing roadways for access to Estate, and the provisions of the ordinance as to both the standards in this regard and the mandate for consideration of such access, the Commission's denial of primary approval to the plat submitted by Southwest based upon the inadequacy of existing roadways was not erroneous as a matter of law. Inasmuch as the denial on this basis was not incorrect, the trial court did not err in affirming the Commission's decision. Accordingly, the trial court did not abuse its discretion when it denied Southwest's motion to correct error.

Affirmed.

MAY, J., and CRONE, J., concur.